



POLICE DEPARTMENT

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FIRST DEPUTY COMMISSIONER  
OFFICE

April 10, 2015

MEMORANDUM FOR: Police Commissioner

Re: Detective Albert Jackson  
Tax Registry No. 933869  
Narcotics Borough Brooklyn South  
Disciplinary Case No. 2013-10271

Detective Daniel Ticali  
Tax Registry No. 929255  
Organized Crime Control Bureau  
Disciplinary Case No. 2013-10269

The above-named members of the Department appeared before me on December 5, 2014, charged with the following:

Disciplinary Case No. 2013-10271

1. Said Detective Albert Jackson, on or about May 10, 2012, at approximately 1855 hours, while assigned to Narcotics Borough Bronx<sup>1</sup> South and on duty [REDACTED] [REDACTED] abused his authority as a member of the New York City Police Department, in that he frisked Kyoma Whint, without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 2 - STOP AND FRISK

2. Said Detective Albert Jackson, on or about May 10, 2012, at approximately 1855 hours, while assigned to the Narcotics Borough Bronx South and on duty in [REDACTED] [REDACTED] engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that he searched Kyoma Whint's bag without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5- PUBLIC CONTACT- PROHIBITED  
CONDUCT

<sup>1</sup> At the incident time Respondents were assigned to Brooklyn South Narcotics. The charges were drafted in error.

Disciplinary Case No. 2013-10269

1. Said Detective Daniel Ticali, on or about May 10, 2012, at approximately 1855 hours, while assigned to Narcotics Boro Bronx South and on duty in [REDACTED] [REDACTED] abused his authority as a member of the New York City Police Department, in that he frisked Kyoma Whint, without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 2 - STOP AND FRISK

The Civilian Complaint Review Board (CCRB) was represented by Carrie Eicholtz, Esq., Respondents Jackson and Ticali were represented by Michael Lacondi, Esq.

Respondents through their counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 2013-10271

Respondent Jackson is found Guilty.

Disciplinary Case No. 2013-10269

Respondent Ticali is found Guilty.

FINDINGS AND ANALYSIS

Disciplinary Case No. 2013-10269

**Improper Frisk**

The New York State Court of Appeals in People V. DeBour, 40 N.Y.2d 210 (1976) has identified four separate levels of street encounters that take place between the police and the public at large. Knowledge of these four levels and the requisite level of suspicion that accompanies each is critical to any evaluation of a street stop. These levels of encounter have similarly been adopted by the Police Department (PD 344-153):

Level I - Request for Information, is where a police officer has an articulable reason to approach someone, yet lacks the authority to search the person based on this low level of encounter. The level of suspicion required is any articulable reason to approach.

**Suspicion of criminality is not required** (Emphasis added). However, the member of the service must be able to articulate a basis beyond mere whim and caprice.

Level II - Common-Law Inquiry, is where there is founded suspicion that criminality is afoot. This could be triggered by false responses to questions posed during the Request for Information, as well as observations by members of the service.

Level III - Stop, Question and Frisk, involves a reasonable suspicion by the police officer that a person is committing, has committed or is about to commit a felony or Penal Law misdemeanor. It is at this level that the information known to the member of the service is of such weight and persuasiveness as to make the member of the service, depending on his or her judgment and experience, reasonably suspect criminality. It is also during this



level that Criminal Procedure Law Section 140.5 comes into play regarding making an arrest without a warrant (subdivision 1), searching an individual with consent and may frisk for a weapon where the police officer believes he is in danger of physical injury.

Level IV - Arrest, involves probable cause to believe that a crime was committed and the person arrested committed it. At this level, a search incident to the arrest to secure weapons and prevent evidence destruction as well as to inventory property is permissible.

Respondent Ticali stands charged with frisking Whint without sufficient legal authority. In summary, Whint testified that on May 10, 2012 Respondent Jackson, his partner Respondent Ticali, Whint and his girlfriend Brown all waited in the lobby at [REDACTED]

[REDACTED] They all rode up in the elevator.

Respondent Ticali exited on one floor, Whint and Brown exited on another floor and Respondent Jackson exited on another floor. Eventually Respondent Jackson encountered Whint and Brown on one of the floors and he questioned them. Brown and Whint showed ID. Brown said she lived in the building and was waiting for her brother, Person A and Whint said he was with Brown. Apparently no effort was made to reach Person A, Brown's close friend she considered a "brother," to see if her statement was true before Respondents took action. Whint seemingly had on close fitting clothes: Capri pants rolled up above the ankles, a Rastafarian beanie hat, a "hoodie" and canvas sneakers. There was no testimony that Whint had any bulges in his clothing. Respondent Ticali testified that as Respondent Jackson spoke to Brown, Whint appeared to be "blading his body" or moving away as if trying to hide something or taking a fighting stance so he decided to frisk him. Yet Respondent Ticali apparently made no

mention of this “blading” action when interviewed by the Civilian Complaint Review Board regarding this allegation. This “blading” of the body could be based on a number of factors, but none of them standing alone make out reasonable suspicion that Whint was committing a crime, committed a crime, or was about to commit a crime. Respondent Ticali acknowledged that he was not responding to a police call or any complaints that a male and female were attempting a break-in or were doing drugs. Respondent Ticali had no description of two suspects regarding a crime. Thus, there was no legal basis to frisk Whint.

Accordingly, Respondent Ticali is found Guilty.

Disciplinary Case No. 2013-10271  
**Improper Frisk and Search**

Respondent Jackson stands charged with frisking Whint and searching his bag without sufficient legal authority. As previously stated, Whint seemingly had on close fitting clothes and there was no testimony that he had a bulge. Nor was Respondent Jackson responding to any particularized complaint regarding burglaries or drugs. He was simply told by the Lieutenant, (as Respondent Jackson testified) to conduct a vertical sweep of the building. Both Brown and Whint testified credibly that they were kissing and hugging when stopped. They were not engaging in any “casing” activity as Respondent Jackson alluded to in his testimony and as the Stop, Question and Frisk reports indicated.<sup>2</sup> Respondent Jackson testified that Brown and Whint acted as if “they was trying to go in somewhere where they shouldn’t be” and that raised his suspicion. Yet, this action does not amount to casing; nor did it raise his suspicion to the level of reasonable suspicion.

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<sup>2</sup> “Casing” involves scouting out a location or victim for purposes of targeting such for criminal activity.



Brown had no bulges. She was wearing stretch pants under cut off shorts and a plaid shirt. She had a small purse containing her money and ID, not indicative of how a person casing a location would be equipped. Respondent Jackson did not describe Whint as having any bulges. Whint described being frisked as follows: Respondent Jackson patted his armpits, arms, wrists; went down his waist, grabbed his pockets front and back as well as the pockets on his hoodie. He also checked his ankle area even though Whint was wearing Capri pants. Following the search of Whint and his bag, he and Brown asked if they could leave and were told no; that they had to wait for a female to search Brown. Whint described the search as follows: Simultaneously as Brown was being searched by a female officer, Whint was taken into a stairwell by Respondents Jackson and Ticali where he was searched a second time. All of his pockets were grabbed and searched. Respondent Jackson told Whint to remove his sneakers. Following the second search of Whint, Person A arrived. He was told to show ID and was then told he had to go somewhere else, so Person A went downstairs. Following their search, Whint and Brown also went to the lobby where Brown's mother was waiting.

Despite the fact that Respondent Jackson testified that he feared for his safety based on Whint's behavior in the hallway where he encountered Whint and Brown a second time, he did not seem to fear for his safety when he saw them in the lobby of the building and according to Whint, rode up in the elevator with them. There was no legitimate basis for Respondent Jackson to conduct the frisk and search of Whint as Whint testified to. Respondent Jackson also testified that Whint "bladed" his body, but his fear and the "blading" standing alone are insufficient to support a frisk and search of Whint. A level III inquiry requires reasonable suspicion on the part of Respondent

Jackson that Whint was committing, has committed or is about to commit a felony or Penal Law misdemeanor. Certainly in conducting a vertical of the building, he could make a common law right of inquiry. But once he was shown identification from Brown and Whint, he had no legal basis to frisk and search Whint; particularly since apparently he never checked out Brown's statement that she was waiting for her brother before taking police action.

Accordingly, Respondent Jackson is found Guilty of the frisk and search of Whint.

#### PENALTY

In order to determine an appropriate penalty, Respondents' service records were examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent Jackson was appointed to the Department on January 20, 2004. Respondent Ticali was appointed to the Department on July 2, 2001. Information from their personnel records that was considered in making this penalty recommendation is contained in the attached confidential memoranda.

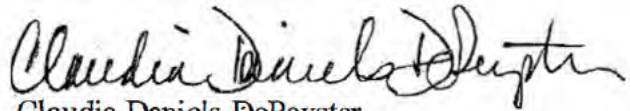
Respondent Ticali has been found Guilty of frisking Whint. Respondent Jackson has been found Guilty of frisking and searching Whint. The CCRB prosecutor asked for a penalty recommendation of five vacation days for Respondent Ticali and eight vacation days for Respondent Jackson. However, in Disciplinary Case No. 2013-9653 (February 19, 2015) and Disciplinary Case No. 2013- 9654 (February 19, 2015), two, eight-year members of the Department with no prior disciplinary record were charged respectively



with stopping and frisking a person; and stopping, frisking and searching a person, the penalty imposed was the forfeiture of three vacation days.

Accordingly, it is recommended that Respondent Ticali and Respondent Jackson each forfeit three vacation days.

Respectfully submitted,



Claudia Daniels-DePeyster  
Assistant Deputy Commissioner Trials

**APPROVED**

MAY 27 2015  
  
WILLIAM J. BRATTON  
POLICE COMMISSIONER



POLICE DEPARTMENT  
CITY OF NEW YORK

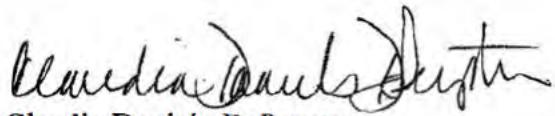
From: Assistant Deputy Commissioner Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
DETECTIVE ALBERT JACKSON  
TAX REGISTRY NO. 933869  
DISCIPLINARY CASE NO. 2013-10271

In 2012 and 2014, Respondent Jackson received an overall rating of 4.0 "Highly Competent" on his annual performance evaluations. In 2013, he received a rating of 4.5 "Extremely Competent/ Highly Competent." Respondent Jackson received four Excellent Police Duty medals in his career to date. He also received an Honorable Mention medal.

[REDACTED]

In 2010, Respondent Jackson received Charges and Specifications for failing to safeguard his firearm in that he placed it on top of a safe without securing it. He embarked on another task and the firearm fell behind the safe undetected. He was unable to locate the firearm until the next evening. Respondent pleaded Guilty and forfeited ten vacation days.

For your consideration.

  
Claudia Daniels-DePeyster  
Assistant Deputy Commissioner Trials

POLICE DEPARTMENT  
CITY OF NEW YORK

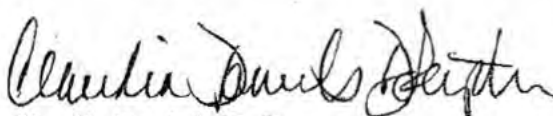
From: Assistant Deputy Commissioner Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
DETECTIVE DANIEL TICALI  
TAX REGISTRY NO. 929255  
DISCIPLINARY CASE NO. 2013-10269

In 2011 and 2013, Respondent Ticali received an overall rating of 4.5 "Extremely Competent/ Highly Competent" on his annual performance evaluations. In 2012, he received a rating of 4.0 "Highly Competent." Respondent Ticali received two Excellent Police Duty medals in his career to date.

[REDACTED]

Respondent Ticali has no prior formal disciplinary record.

For your consideration.

  
Claudia Daniels-DePeyster  
Assistant Deputy Commissioner – Trials